for each acre of the holding. This is so even though the owner does not plant more trees than the acreage of his holding multiplied by 30.

MAGISTRATE'S CRIMINAL APPEAL.

Das for the Appellant.

R. M. Cruer, D.P.P. for the Respondent.

Cur. Adv. Vult.

HASTINGS, J.—In this case the Appellant was charged with planting rubber on Lot No. 4416 in the Mukim of Senggang, in contravention of the provisions of section 19 of Enactment 37 of 1936.

The first point put forward on behalf of the Appellant was that the charge was not specified with sufficient particularity, and that it did not disclose under which subsection of the section the charge was laid. I do not think that there is any substance in this point.

It is only subsection (i) of section 19 that deals with the planting of rubber. Subsection (ii) deals with replanting. And I think that the charge gave to the accused notice of a matter with which he was charged; and that he was charged, with an offence under subsection (i). But the main contention of Mr. Das was that under the wording of section 19 it was permissible for any owner of a holding to plant on any acre of the holding which had had rubber plants growing thereon whether before or after the first day of June, 1934, which had not been planted in contravention of the Enactment to the extent of 30 trees for each acre of the holding, that is to say, that provided the owner does not plant more trees than the acreage of his holding multiplied by 30 he commits no offence.

The facts were shortly that the Appellant had planted about 880 trees on six acres of his holding of 26 acres 2 roods and 36 poles. If Mr. Das' contention is correct he would be entitled to plant about 800 and the Assistant Legal Adviser suggested that in any case an offence had been committed. This is technically true, but the Appellant was convicted on the view that Mr. Das' contention was not correct and further all trees planted in contravention of the section can be eradicated and it would make a considerable difference to the Appellant if 880 trees were eradicated when only 80 should be. It is therefore necessary to deal with the point.

In order to deal with this contention it is necessary to examine the section. In my opinion the interpretation is as follows. Subsection (i) starts with a prohibition of all planting of rubber and goes on with a proviso that planting 30 trees on any acre of any holding to replace trees formerly growing thereon shall not be deemed to be planting. It deals with what is generally termed "supplying." Subsection (ii) deals with replanting which is defined as planting more than 30 plants or seeds on any acre of rubber. This can be done only with the leave of the Controller. No leave was obtained and the Appellant does not claim to come under this subsection.

Now the word "any" does not admit of limitation but the question is what does the section permit the owner to do with "any acre" and the answer is to plant 30 rubber plants upon it. Mr. Das' contention is that it means he may plant 90 or 100 rubber plants upon it provided he refrains from planting any upon some other acre on which he has the right to plant 30. In my opinion this contention is not sound and the meaning of the section is that the owner may plant 30 plants and 30 only upon any one acre—and that to plant more than 30 upon any one acre constitutes an offence. Mr. Das urges that in practice an owner may have properly planted 60 trees on two acres or many more trees on a larger area and that by selection of a certain area it might appear that more than 30 trees had been planted on a given acre. This is no doubt true, but I do not anticipate any danger of such a case happening in fact.

In my view, therefore, the Appellant's contention fails and the appeal is dismissed.

Appeal dismissed.

[APPELLATE CRIMINAL JURISDICTION]

TERRELL, Ag. C.J.

September 21, 1938.

PUBLIC PROSECUTOR.....Appellant

v.

W. B. R. RUDGUARD .....Respondent.

[SELANGOR MAGISTRATE'S CRIMINAL APPEAL No. 92 of 1938]

Criminal Procedure Code, S.S. 305, 307—Conviction on a plea of guilty—inadequacy of sentence—whether appeal by Public prosecutor lies as to.

The respondent was convicted on a charge of causing death by a rash act not amounting to culpable homicide, on his own plea of guilty, and fined $500 and disqualified from holding a license for three years. The Public Prosecutor appealed on the ground that the sentence was inadequate. On behalf of the respondent it was contended that in view of Section 305 of the Criminal Procedure Code an appeal could not lie as Section 305 gives the accused person only the right of appeal as to sentence.

Held, that "Public Prosecutor" comes under the description of "any person" in Section 307 of the Code without being specifically mentioned and that "there shall be no appeal" mean "there shall be no appeal by any person," and that accordingly Section 305 admits of an appeal by the Public Prosecutor when the accused has pleaded guilty.

CRIMINAL REVISION.

M. C. Hay, (D.L.A.) for the Appellant.

Mills for the Respondent.

Cur. adv. Vult.

TERRELL, AG. C.J.—The Respondent was charged with causing the death of one Taib bin Nagah by a rash act not amounting to culpable homicide, an offence punishable under section 304A of the Penal Code. The Respondent pleaded guilty, and was convicted, and fined $500, and

disqualified from holding a licence for three years. The Public Prosecutor has appealed on the ground that the sentence was inadequate.

On the hearing of the appeal Mr. Mills for the respondent raised two preliminary objections:—

(i) that in view of section 305 of the Criminal Procedure Code an appeal would not lie; and

(ii) that the grounds of appeal were inadequate.

As regards the second point, the only ground of appeal was as follows: "that in the circumstances of this case the sentence was inadequate." It is difficult to see what other grounds could have been given without setting out the whole record. The Public Prosecutor's submission was that where a high degree of criminal rashness has been proved or admitted and the act complained of has resulted in the death of an innocent cyclist, it was an error in principle for the learned Magistrate to have inflicted a fine instead of imprisonment. I do not think that the Respondent was prejudiced in any way, and the objection was over-ruled.

The first preliminary objection raised an interesting point. Section 305 of the Criminal Procedure Code reads as follows:—

> "When an accused person has pleaded guilty and been convicted by a Magistrate on such plea, there shall be no appeal except as to the extent or legality of the sentence."

The present appeal is brought under section 307, which specifically excepts cases falling under sections 304, 305 and 306. Section 307 allows an appeal "by any person who is dissatisfied with any judgment etc". The context shows that 'any person' means the accused or the Public Prosecutor. Mr. Mills argued that section 305 gives the accused person only the right of appeal as to sentence, and that the Public Prosecutor is by inference precluded from appealing where a plea of guilty has ben accepted. The argument was that if the right to appeal had been reserved to the Public Prosecutor, he should have been specifically mentioned, as he is in various other sections. I do not think that this argument is well-founded. Admittedly 'public prosecutor' comes under the description of 'any person' in section 307 without being specifically mentioned, and it appears to me that the expression 'there shall be no appeal' in section 305 is equally comprehensive. 'There shall be no appeal' must mean "there shall be no appeal by any person"; any other construction would be forced and unnatural.

Mr. Mills also based an argument on the fact that section 305 was derived from section 412 of the Indian Code of Criminal Procedure, this section being in its turn derived from section 167 of the Presidency Magistrates Act, which provides that:—

> "Any person convicted.....may appeal to the High Court.....provided that when an accused person has been convicted on his own plea no such appeal shall lie except as to the extent and legality of the sentence."

The first part has been re-enacted as section 411 of the Indian Code, and the second part as section 412. No doubt in its original form the section only contemplated an appeal by an accused person, but when the section was divided up, such a restriction need not necessarily be inferred. There is, however, no decision upon the meaning of section 412 in the Indian Law Reports for the very good reason that in India the Crown has no right of appeal against sentence. Mr. Mills in fact asks the Court to give to section 305 a construction which would only be reasonable if no right by the Public Prosecutor to appeal against sentence had been given by law. Generally speaking, if the language of a statute is free from doubt, it must be interpreted according to its ordinary and natural meaning, and it is not permissible to accept a construction derived from any other law, if thereby the true and actual meaning of the Statute under construction be varied or denied effect. (see *per* Lord Shaw of Dunfermline in *Mohamed Syedol Ariffin* v. *Yeoh Ooi Gark*, (1916) 2 A.C. at p.581.) I would also refer to the *dictum* of Lord Macmillan in *Commissioner of Stamps, S.S.*, v. *Oei Tjong Swan*, (1933) A.C. at page 387:—

> "The best and safest guide to the intention of all legislation is afforded by what the legislature itself has said".

In my view, therefore, section 305 is quite free from doubt, and admits of an appeal by the Public Prosecutor when the accused has pleaded guilty. This objection, therefore, fails.

On the merits of the appeal I directed some further evidence to be called, which cleared up one or two points, especially as regards the steering and the brakes of the car, but did not substantially vary from the statements made in the course of the trial, and which were accepted by the learned Magistrate. The facts are not really in dispute, and I take the following paragraph from the learned Magistrate's grounds of judgment:—

> "On the 7th August, 1938, the accused driving a 20 horsepowered Dodge car and a friend driving a smaller car left Kuala Lumpur at about 8-10 a.m. for Batu Tiga. At the 2nd mile, Klang Road, where the road turns or curves sharply to the left, both cars were travelling at about 40 miles per hour, the smaller car being in front. The smaller car negotiated the corner but the accused who was more in the centre of the road ran into the grass verge on his off-side of the road, travelled along it for a distance of 40 feet and with the off-side

of the car hit a Malay cyclist who apparently had swerved on to the grass verge in an attempt to avoid the accused. The Malay and his bicycle were picked up at a distance of 40 feet from the point of impact, the man probably being killed instaneously."

In considering the amount of criminality to be imputed, all the circumstances should be taken into consideration. I would summarise the main points as follows:—

1. The accused was driving at between 40 and 45 miles an hour and following another car going the same pace at a distance of about 50 yards.
2. On approaching the bend in the road at the 2nd mile from Kuala Lumpur this pace was maintained, although the bend in the road would prevent the accused from seeing any car ahead. The car in front would further obscure the view of the car behind.
3. The accused drove in the middle of the road.
4. The foot brake was inefficient. It was a hydraulic brake which did not function on being first pressed down. To have any effect it had to be pressed down twice and even then was only about 75 per cent efficient and operated mainly on the near back wheel. This not only caused the car to swerve to the right, but also necessitated an appreciable delay. In a second, at 40 miles per hour, the car would travel 60 feet.
5. The steering gear was very loose. The effect of this is that on the wheel being turned the car would not immediately respond. There would be a definite lag.
6. As the oncoming cyclist had actually moved on to the 8 feet grass verge there would have been no accident if the accused had succeeded even in keeping to the road, albeit well to his wrong side. In fact the off wheels of the car went on to the grass verge for a distance of 40 feet.
7. The brakes were never applied at all.

I cannot accept counsel's submission that the defective steering was a mitigating circumstance, and I do not agree that the fact that the brakes were defective was immaterial, because they were not applied. It is the duty of every motorist to see that his brakes and steering gear are in order, and it is *prima facie* evidence of negligence to drive a car at a high speed when they are not in order. The learned Magistrate also accepted as a mitigating circumstance an allegation by Mr. Mills that at the bend in question the road, which was 24 feet wide, narrowed to half that width. This statement is definitely incorrect, as is shown by the accurate survey which was put in evidence before me, and on the appeal Mr. Mills admitted that there was little, if any, difference, in the width of the road at the bend. The fact that some hundreds of yards nearer Kuala Lumpur the road is very much wider appears to me to be irrelevant to the facts in issue.

It was urged that the accused had only driven the car himself for five weeks, and was not often allowed off the estate. I was not impressed by this argument. Even assuming in the accused's favour that he had never driven the car until the date before the accident, it is quite impossible, even in a single drive of 17 miles from his estate to Kuala Lumpur, that he would not have realised that both his brakes and steering gear were defective, nor is it a mitigating circumstance that the accused was not familiar with the road, if indeed such was the fact. Motorists drive frequently along roads with which they are not familiar, and if they come to a bend, it is their duty to exercise special care. It is obvious that at the speed at which the accused was driving the car, with its defective brakes and steering gear, it was completely out of control, and that the accused took the risk of driving round a blind corner in such a manner that he even went on to the grass verge on his wrong side of the road. It was not his own life that was endangered but that of anyone on the road at all. In the absence of a deliberate intention to cause death or injury, it is difficult to imagine a case of more extreme recklessness, and the appeal will be allowed. Even if no accident had resulted, the accused's conduct would have merited punishment under section 336 of the Penal Code. As the result of the accused's rashness was the death of the cyclist, the offence falls under section 304A, and is punishable with two years rigorous imprisonment or a fine or both.

I will take into consideration the fact that the accused has already stood his trial once, and had a clear record, and made no effort to evade his responsibilities, and also the fact stated by the learned Magistrate that at that time the type of offence was not prevalent, and alter the sentence to one of six months rigorous imprisonment. Unfortunately, this type of offence is common in Singapore, and, since the accused's trial, appeares to have increased in the Federated Malay States, and sentences may have to be increased until they operate as a sufficient deterrent.

The fine will be repaid, and the suspension of licence confirmed.

Appeal allowed. Conviction confirmed. Sentence enhanced.